108

Supreme Court, U.S.
FILED

No. 08-504

SEP 18 2008

OFFICE OF THE CLERK

In The

Supreme Court of the United States

DIANE WILLIAMS,

Petitioner,

v.

SUNTRUST BANKS, INC.,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

DIANE WILLIAMS
4988 Jersey Avenue
Gulfport, Florida 33707
(727) 321-1953
Petitioner pro se

THE QUESTIONS PRESENTED

1. Petitioner, Diane Williams was prejudiced by the Respondent's breach of contract and non-compliance with courts procedural operations and brings this action pursuant to 42 U.S.C. 1983. The Respondent lacked a meritorious defense yet continued to operate knowingly, willfully and intentionally with reckless and deliberate indifference because the Petitioner exercised her federally protected rights in good faith.

2. Did the lower courts abuse their discretion or did they establish new standards for complying with the statutory grounds of the *Finality of Judgment Provisions* when they refuse to set aside and Respondent's failure to immediately appeal Petitioner's Default Final Judgment prior to the Petitioner's Notice of Appeal and Certified Interlocutory Order.

3. Did the lower courts provide the Petitioner the ability to compete on an equal footing and procedurally safeguard her or did they violate equal protection and the right to access the courts under color of law?

4. Under the Full Faith and Credit Act, 28 U.S.C. § 1738, did the Respondent's assertion and representation of res judicata adhere to the principles plead under Federal Rules of Civil Procedures 8(c)?

5. Did the Respondent (SunTrust) misapply the law to facts without unsupported disclosure which contribute to inequality and manifest injustice by

THE QUESTIONS PRESENTED – Continued

breaching their fiduciary duty to the Petitioner's cause of action and her 24-year employment contract as alleged?

- Race Discrimination
- Public Policy Retaliation
- Harassment
- Wrongful Deprivation of Career Opportunity
- Wrongful Failure to Promote
- Employment Humiliation
- Hostile Work Environment
- Wrongful/Constructive Discharge
- Failure to Enforce Adequate and Consistent Corporate Policies and Procedures Relating to Employment Practices
- Misclassification of Employment

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All parties appear in the caption of the case on the cover page.

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OPINIONS BELOW

The summary opinion of the court of appeals and the district court can be available or designated for publication although they have been unpublished as exhibited below:

A copy of the opinion of the United States Court of Appeals appears at appendix 1.

A copy of the opinion of the United States Middle District Court of Florida and supplemental State Court appears at appendix 6.

A copy of the appealed and unconstitutional summary judgment that the Respondent relied on is *Williams v. Huntington* from the United States Middle District Court of Florida appears at appendix 8.

JURISDICTION

The Judgment of the Eleventh Circuit Court of Appeals affirming the Judgment of the United States Middle District of Florida was filed and entered on 06/04/08. appendix 1. Timely petition for rehearing was denied by Order dated 07/23/08. appendix 10.

This Petition is timely filed within 90 days and the jurisdiction of the Court is invoked under individual causation issues pursuant to 28 U.S.C. 1291 and the determination of the procedural outcome

according to the Interlocutory Certification for Default Final Judgment pursuant to 28 U.S.C. 1292. appendix 18.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Respondent (SunTrust) violated the Bill of Rights "Separate but Equal" doctrine under the Equal Protection clause of the Fourteenth Amendment. Diane Williams, Petitioner and African American Women should enjoy the same rights as other Americans. However, as a result of the lower courts exclusionary behavior, Williams was not provided a full and fair opportunity to litigate her case by the determination of a Trial by Jury. *Brown v. Board of Education of Topeka,* 347 U.S. 483 (1954).

The Respondent (SunTrust) violated the Bill of Rights "Substantive Grounds and Fair Procedure" under the Due Process clause of the Fourteenth Amendment. The court shall not substantially burden a person's exercise of due process even if the burden results from a rule of general applicability. The Petitioner was thereby deprived of life, liberty and property as a result.

The Respondent (SunTrust) violated Title VII of the Civil Rights Act of 1964 as amended by the CRA of 1991, and Title VII, 42 U.S.C. 1981, which provides in any action or proceeding, and the First Amendment to the Constitution of the United States while

acting "under color" of State Law, the rights of access to the court. As a result the Petitioner was deprived of her economic liberties and constitutionally protected property interest without due process.

A person whose civil rights exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against the government and the Respondent on all Federal and State law.

STATEMENT OF THE CASE

This initial complaint involved a Race and Retaliation discharge action by Diane Williams, against SunTrust Bank, Inc., who interviewed Petitioner while she was employed at Huntington National Bank. During the interview the Petitioner informed SunTrust that she had filed an Internal Workplace Discrimination Complaint against Huntington prior to the Respondent's Asset purchase of Huntington's Florida Operation and Employees, The Respondent (SunTrust) retained the Petitioner and all other employees in the Central Plaza Branch on 02/15/02.

SunTrust did not internally safeguard Williams from continuous and discrete retaliatory employment actions pursuant to the Effect of Merger F.S. 607.1106, Corporate liability F.S. 623.734 and Title VII of the Civil Rights Act of 1964, as amended by the CRA of 1991, 42 U.S.C. 2000e-3(a), Title VII, 42 U.S.C. 1981.

The Petitioner has repeatedly challenged and exhausted two full sets of administrative adjudication procedures while exercising her statutory rights of privilege while raising her Constitutional rights to equal protection and due process in the District and Appeals Courts.

The Respondent (SunTrust) accepted supplemental jurisdiction to defend the court action and did not decline that jurisdiction when they consented contractually by making a general appearance as a matter of law.

This case has proven a repeated and systemic pattern of equal protection problems and disparity in the district court targeted directly at minority and economically disadvantaged female workers.

There is absolutely no justification for the deprivation of due process and supplemental jurisdiction and the burdensome and illegal procedural determination and denial of a full and fair opportunity to be heard twice in a court of law. The aggregate abuse and misconduct by the Respondent added insult to injury. *McFetters v. Amplicon, Inc.*, 82 Cal. App. 4th 200 (2000).

As workers approach the 21st Century we must rectify the undermining of this Discriminatory Procedural Policy in the courts to ensure that resolutions are equitable prior to compounding injuries:

1. Internal Workplace Discrimination Complaint
2. EEOC charge filed – Huntington National Bank
3. EEOC charge filed – SunTrust Banks, Inc.
4. EEOC Conciliation Huntington – Declined
5. EEOC Conciliation SunTrust – Declined
6. EEOC Human Relations Review Board Hearing
7. EEOC Human Relations Review Board Hearing – SunTrust Executive Reporting Services
   City of St. Petersburg
   Transcript Report 018379
8. EEOC Notice of Right to Suit Huntington
9. EEOC Notice of Right to Suit SunTrust
10. Federal Court Complaint Huntington
11. Federal Court Complaint SunTrust
12. Petitioner's Motion for Administrative Hearing – HNB
13. Petitioner's Motion for Administrative Hearing – SunTrust
14. Pre-Trial Discovery Huntington
15. Pre-Trial Discovery SunTrust
16. Deposition Huntington

17. Deposition SunTrust
18. Court Ordered Mediation Huntington – Declined
19. Court Ordered Mediation SunTrust – Declined
20. Pre Trial Hearing Huntington declined
21. Pre Trial Hearing SunTrust Failure to Appear
22. Notice of Appeal *Williams v. Huntington*
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26. Rehearing En banc Denial Huntington
27. Rehearing En banc Denial SunTrust
28. Default Final Judgment SunTrust
29. Certified Interlocutory Order SunTrust
30. Petitioner Issuance of Stay SunTrust
31. Petitioner Petition for Writ SunTrust

The Petitioner holds that this decision conflicts with the moral obligation and public policy concerns as it relates to the constitutional principle and procedural uniformity and determination of the recent decisions and reinforcement of the United States Supreme Court decision pursuant to 42 U.S.C. 1981, as amended by the CRA of 1991 and *CROC West Inc. v. Hedrick G. Humphries*, No. 06-1431.

The Non-Final order in the lower district court was improperly measured and based on the Respondent (SunTrust) erroneous and misused application of res judicata. The procedural record clearly lacked and misrepresented res judicata affirmative defense, lacked consideration, caused duress and illegality existed pursuant to Fed.R.Civ.P. 8(c).

The Petitioner received unequal treatment and was adversely affected by the court's decision when they departed from the Supreme Court in allowing a Civil Complaint to be dismissed under the Interlocutory Default Final Judgment provisions of Rule 55A(b)(2) of the Federal Rules of Civil Procedure under these circumstances.

JURY TRIAL DEMAND

Wherefore, Petitioner who has timely sought Certiorari, demand Judgment against Respondent for the sum of Forty Million Dollars with interest and cost pursuant to Rule 8 of the Federal Rules of Civil Procedure for extremely and outrageous conduct, and for lack of consideration and misrepresentation of res judicata in bad faith causing the Petitioner intentional infliction of emotional distress and violation of her Federal Rights of employment and the inconvenience of compounding discriminatory practices experienced in the judicial process and the deprivation of a full and fair opportunity to be heard in the court of law.

The Respondent failed to meet their burden before the serious harm was sustained and civil disobedience and bad faith caused the petitioner irreparable harm.

Wherefore, Petitioner demands:

a. That Respondent pay damages in the sum of $40,000,000.00;

b. That Respondent be specifically ordered to perform their obligation under the contract;

c. That Respondent pay interest and reasonable cost and fees incurred by Petitioner.

Petitioner demands a Trial by Jury.

REASON FOR GRANTING THE PETITION

The lower Courts Non-final Order conflicts with a decision of the United States Supreme Court pursuant to Congress's authority under section 5 of the Fourteenth Amendment which includes the power to enact pursuant to 42 U.S.C. 1983 and penalize or deter or impede an individual in his/her exercise of rights. *Fedler v. Casey,* 487 U.S. 131 (1988).

FAILED EARLY PREVENTIVE MEASURES

The Respondent breached the Petitioner's employment warranty by shifting liability to their predecessor and failed to accept early EEOC prima facie affidavit and conciliation offer and the Petitioner's good faith compliance with the court ordered mediation to ensure a quick resolution.

The Respondent shifted liability and ignored Huntington's previous complaint and failed to join with them at the same time that both complaints were separate and active during the EEOC process and in the Federal court even though both cases had a different set of facts, parties and cause of actions. SunTrust refused the arrangement and proceeded separately and independently by its own doing thereby remaining unattached from the HNB adjudication, judgment and appeal.

FAILURE TO COMPLY WITH COURT ORDER

The Appellee pursuant to Fed.R.Civ.P. 41(b) disobeyed proper legal procedures and several mandates and deadlines and failed to respond to the Court's Order to show res judicata cause.

The Respondent failed to invoke the doctrine of res judicata in their motion for summary judgment and affirmative defense and failed to satisfy their burden of proof.

The court ordered all parties to show grounds for res judicata by 07/20/07. The Respondent again failed

to respond and comply with the court's order to prove that the first and secondary claim met the elements of res judicata.

The Petitioner complied with the Judge's Order by the court's deadline of 07/20/07 with a response on res judicata and intentional and wrongful termination by SunTrust pursuant to Title VII, 42 U.S.C. 1981 as amended by the Civil Rights Act of 1991 and Equal Pay Act of 1963.

COURT ERRED IN RES JUDICATA DETERMINATION

The Respondent knew early on that they had no control over and were not a party to Huntington's District and Appeals Court adjudication and that their cause of actions were not the same nor was the claim transaction related.

DEFAULT FINAL JUDGMENT

On 08/31/07, Petitioner rightfully moved against the Respondent for a Default Final Judgment especially after no responsive pleading had been filed by or on behalf of the Respondent and the time for filing such res judicata disclosure and pleading had passed.

LACK OF DUE DILIGENCE

The lower court abused its discretion by allowing the Respondent (SunTrust) to defend on a judgment

that was not legally joined and protected and one that had already been adjudicated and appealed.

On 09/18/07, the Respondent fell short of a sound discretion to Appeal and set aside the Final Default Judgment pursuant to Practice Book 1734, 1735 and 1742 from the court to properly open the Default. *Jartman v. Pacific Fire Ins. Co.*, 69 Conn. 355, 362, 37 A. 970.

On 10/03/07 the Judge rendered a non-final memorandum order to dismiss the case on res judicata grounds but failed to render a Final and Legal Judgment.

On 10/23/07, Petitioner moved to certify the court and served the Respondent with a Notice of Intent Not to Replead.

The lower court failed to allow the mechanics of the court system to work and failed to execute the judgments and close the case prior to the Petitioner's Notice of Appeal and Interlocutory Final Default Judgment to the Eleventh Circuit Court of Appeals.

DEPRIVATION OF DUE PROCESS

The Petitioner was not able to obtain personal jurisdiction in the district court and was deprived of her rights to equal protection and due process and a full and fair opportunity to have her case heard on the merits.

The Respondent deliberately and consistently challenged the court rules and administrative process rather than simply process the Petitioner's claim in good faith and on the merits.

The Respondent failed to comply with the District Court procedural orders of judicial authority as stated:

- Failed to appear at the Pre-trial Conferences
- Failed to move forward with the material fact in the affirmative defense and their motion for summary judgment
- Failed to comply with the Judge's Mediation Order
- Failed to respond to Petitioner's retaliation discharge complaint
- Failed to respond to Petitioner's motion not to replead
- Failed to Appeal the Petitioner's Default Final Judgment in the lower Court
- Failed to properly set aside the default with good cause action in res judicata defense.

ABUSE OF DISCRETION

The Huntington National Bank did not share or was not joined in the Respondent's Retaliation Public Policy Discharge action but the Respondent continued to substitute this action using the improper and incorrect application of res judicata. *Schoonmaker v.*

Albertson Douglas & Douglas Machine Co., 51 Conn. 387 (1884).

The Law of the case doctrine presumes a hearing on the merits, *United States v. Hatter,* 532 U.S. 557, 566 (2001). The lower court refused to vacate the Huntington adjudicated and already appealed previous judgment. *Kurak v. Bursaw Oil Corp.*, 288 F.3d 15, 17 (1st Cir. 2002).

COURT ERRED IN DENIAL DEFAULT JUDGMENT

In *Williams v. SunTrust* the non-final judgment ruling on 08/17/07 was procedurally insufficient and the lower court abused its discretion by failing to render the petitioner a Final judgment on a separate document pursuant to Fed.R.Civ.P. 58.

NOTICE OF APPEAL

On 11/02/07, Petitioner filed a Notice of Appeal of Non-Order from the United States Middle District of Florida. The motion was timely and filed within 30-days of that order pursuant to Fed.R.App.P. 4(a)(2).

The district court allowed the Respondent to operate to deny equal protection and permitted the court's decision and litigation to proceed knowing that it was not attached to HNB judgment and did not satisfy the elements and substantive interest

required to invoke res judicata. *Connecticut v. Doehr,* 501 U.S. 1, 18 (1991).

CERTIFICATION OF INTERLOCUTORY APPEAL DEFAULT FINAL JUDGMENT

The Respondent repeatedly ignored the Petitioner's engagement in Title VII protected activity and that the retaliatory discharge and wrongful termination still has not been resolved.

Judgment by Default is the final judgment in the case, *Automotive Twins, Inc. v. Klein,* 138 Conn. 28, 33, 82 A. 2d 146 (1951).

The Respondent repeatedly ignored the Petitioner's engagement in Title VII protected activity and that the retaliatory discharge and wrongful termination continued to get shifted and avoided and still has not yet been resolved.

The Petitioner's motion for default final judgment was essential because of the Respondent's intentional and repeated non-compliance pursuant to the provisions of Rule 55A(b)(2) of the Federal Rules of Civil Procedure.

CONCLUSION

The Petitioner, Diane Williams comes before this Supreme Court today not only for herself but also for the millions of economically disadvantaged women

and Americans that are hard working honest and loyal employees who live daily in silence, or go through the endless array of hoops, circles and difficult and rejected barriers by the system and thereby look endlessly for justice and fair treatment in the workplace and our court of law.

This court must seriously review the incorporation doctrine and the economic regulation protection afforded by the Bill of Rights and the authority exercised by the lower court's separate and subsequent determination of the Petitioner's Title VII Public Policy Retaliation and Constructive Employment Discharge by the Respondent (SunTrust).

The Respondent (SunTrust) was aware that Williams was deprived of Life Insurance and Annuity promotional and economic opportunities prior to purchasing the Florida's Huntington operation which included their employees and prior to their retaliation discharge of the Petitioner.

The Respondent intentionally and knowingly permitted the discriminatory and unlawful business practice to continue in violation of the Business and Professional Code as it relates to public policy.

Both employers breached the Petitioner's economic relationship while shifting liability back and forth during the early stages of the EEOC process. They sold the banking business and played the blame game during the EEOC process by shifting employment liability back and forth. SunTrust refused early intervention and conciliation.

Petitioner thereby received two separate and independent "Notices of Rights to Sue" each employer in Federal Court, both had separate and independent causes of action.

The lower courts have provided a one-sided procedural approach designed to make the results favorable to the corporation. The unequal evaluation of the merits on the Petitioner's complaint did not dispense with the Bill of Rights' Fourteenth Amendment and First Amendment, neither did it comply with the technical requirements of finality prior to the subsequent Interlocutory Default Final Judgment by the Petitioner.

For the good of public policy, daily we see more and more workers striking, and losing their pensions, 401-k retirement, or having their Seniority and Benefits taken away by mergers, acquisitions, asset sales, restructuring and takeovers. This Court must look at this question, the very basis of our society is that a man or woman may freely work and be fairly compensated.

Today the workers of America are hurting badly, and this court, must decide that the American worker is worthy of economic liberties and fair, ethical, and just treatment in the workplace guaranteed by the Federal and State Constitutions in a Court of law.

The Respondent asserted a defense hoping to cause the Petitioner to fail. The Petitioner finds the intentional and knowing misrepresentation dubious along with the findings of a critically faulty equal

protection controversy, and violation of the equal protection clause.

This court procedural mechanism has clearly failed to advance on truthful conditions related to the enforcement provisions of workers' lawful rights to equal protection.

This Supreme Court must stand for the American people today, and let the American workers know that, yes, justice does reign in America.

Respectfully submitted,

DIANE WILLIAMS
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(727) 321-1953
Petitioner pro se

September 18, 2008

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 07-15254
Non-Argument Calendar

D.C. Docket No. 05-02360-CV-T-23-TGW

DIANE WILLIAMS,

Plaintiff-Appellant,

versus

SUNTRUST BANKS, INC.,
a Georgia Corporation,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(June 4, 2008)

Before DUBINA, CARNES and BARKETT, Circuit Judges.

PER CURIAM:

Appellant Diane Williams, a *pro se* African-American woman, appeals the district court's dismissal, based on *res judicata,* of her discrimination

and retaliation claims against SunTrust Banks, Inc. ("SunTrust"), and the district court's denial of her motion for a default judgment. On appeal, Williams argues that the district court erred in (1) finding that SunTrust was in privity with Huntington Bank ("Huntington"), which was her former employer before SunTrust purchased Huntington's assets, and (2) denying her motion for a default judgment.

I. *Res judicata*

We review *de novo* the district court's application of *res judicata,* but review for clear error whether a party is in privity with another because the determination regarding privity is a question of fact. *E.E.O.C. v. Pemco Aeroplex, Inc.,* 383 F.3d 1280, 1285 (11th Cir. 2004). *Res judicata,* or claim preclusion, bars a party from relitigating a cause of action that was, or could have been, raised in a previous suit between the parties that resulted in a final judgment on the merits. *In re Piper Aircraft Corp.,* 244 F.3d 1289, 1296 (11th Cir. 2001). We liberally construe *pro se* briefs. *Tannenbaum v. United States,* 148 F.3d 1262, 1263 (11th Cir. 1998). Issues not sufficiently raised in a party's brief are deemed abandoned. *Dalrymple v. United States,* 460 F.3d 1318, 1324 n.6 (11th Cir. 2006).

A party seeking to invoke *res judicata* must satisfy four elements: "(1) the prior decision must have been rendered by a court of competent jurisdiction; (2) there must have been a final judgment on the

merits; (3) both cases must involve the same parties or their privies; and (4) both cases must involve the same causes of action." *In re Piper Aircraft,* 244 F.3d at 1296. If the party satisfies these requirements, the district court must determine whether the new claims could have been raised in the prior suit, and if so, the claims are barred by *res judicata. Id.* The burden of establishing that a current action is barred by *res judicata* is on the party asserting *res judicata. Id.* Summary judgment is a final decision on the merits. *United States v. One Colt Python .357 Cal. Revolver,* 845 F.2d 287, 289 (11th Cir. 1988).

Generally, there is privity between a non-party and a party in a prior action if the non-party's interests were adequately represented by a party that had the same interests. *Pemco Aeroplex, Inc.,* 383 F.3d at 1286. For *res judicata* purposes, claims are part of the same cause of action when they arise out of the same nucleus of operative fact, or are based on the same factual predicate. *In re Piper Aircraft,* 244 F.3d at 1296-97. It is the substance of the actions, and not their form, that is important. *Id.* at 1297. Additionally, *res judicata* bars all legal theories and claims arising out of the same nucleus of facts as a prior action, as the analysis centers on whether the primary right and duty are the same between the two causes of action. *Adams v. S. Farm Bureau Life Ins. Co.,* 493 F.3d 1276, 1289 (11th Cir. 2007) (citation omitted).

We conclude from the record that the district court did not err in finding that this action was

barred by *res judicata,* because (1) the prior suit was a final judgment on the merits, issued by a court of competent jurisdiction; (2) the underlying facts forming the basis of this action occurred prior to Williams's prior action; and (3) it has not been established that SunTrust was not in privity with Huntington.

II. Default judgment

"We review the denial of a motion for a default judgment for abuse of discretion." *Mitchell v. Brown & Williamson Tobacco Corp.,* 294 F.3d 1309, 1316 (11th Cir. 2002). Additionally, we review the denial of a Federal Rule of Civil Procedure 59(e) motion for an abuse of discretion. *Lambert v. Fulton County, Ga.,* 253 F.3d 588, 598 (11th Cir. 2001). Federal Rule of Civil Procedure 55 states that, when a party fails to plead, or otherwise defend, a default must be entered. Fed.R.Civ.P. 55(a). Motions to alter or amend judgment cannot be used to relitigate previously decided matters or raise arguments that could have been made prior to entry of judgment. *Michael Linet, Inc. v. Village of Wellington, Fla.,* 408 F.3d 757, 763 (11th Cir. 2005).

We conclude from the record that the district court did not abuse its discretion in denying the motion for default judgment because SunTrust defended the action, and the motion was filed after the court had dismissed the action with prejudice. Accordingly, we affirm the judgment of dismissal and the

district court's order denying Williams's motion for default judgment.

AFFIRMED.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

DIANE WILLIAMS,

Plaintiff,

v.

SUNTRUST BANKS, INC.,

Defendant. /

Case No: 8:05-cv-2360-T-23MAP

ORDER

(Filed Oct. 3, 2007)

On August 17, 2007, the plaintiff's amended complaint (Doc. 3) against SunTrust Banks, Inc., for retaliation and race discrimination in violation of Title VII, 42 U.S.C. § 2000e was dismissed on *res judicata* grounds (Doc. 34). Williams files "Plaintiff's Motion for Default Judgment Defendant Has Failed to Defend its Own Fundamental Actions and Obligations to the Court Prior to Final Judgment Barring *Res Judicata* Dismissal Pending Litigation" (Doc. 35).

The motion is a curious document. To the extent that the motion seeks default against the defendant, the plaintiff's claims already are dismissed with prejudice (Doc. 34), and the motion is moot. *See* August 17, 2007, Order (Doc. 34) (*sua sponte* barring Williams' claims by *res judicata* based on the adverse adjudication on Williams' claim of racial discrimination in Williams' predecessor action, *Williams v.*

Huntington Bancshares, Inc. d/b/a The Huntington National Bank, 8:04-cv-2298-T-30JSM (2004)).

If liberally construed as a Rule 59(e) motion to alter or amend a judgment, the motion is untimely. Rule 59(e), Federal Rules of Civil Procedure ("Any motion to alter or amend a judgment shall be filed no later than ten days after entry of the judgment."). Regardless, reconsideration under Rule 59(e) is available only to "correct manifest errors of law or fact, or to present newly discovered evidence," and not to "re-litigate old matters, raise arguments, or present evidence that could have been raised prior to the entry of the judgment." *Michael Linet, Inc. v. Village of Wellington, Fla.,* 408 F.3d 757, 763 (11th Cir. 2005).

Finally, because more than thirty days have passed after dismissal with prejudice of Williams' claims (Doc. 34), any appeal of that order is untimely. This case is **CLOSED.**

ORDERED in Tampa, Florida, on October 3, 2007.

/s/ Steven D. Merryday
STEVEN D. MERRYDAY
UNITED STATES
DISTRICT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

DIANE WILLIAMS,

Plaintiff,

-vs-

HUNTINGTON BANC-SHARES, INC. d/b/a THE HUNTINGTON NATIONAL BANK,,

Defendant. /

Case No. 8:04-cv-2298-T-30EAJ

JUDGMENT IN A CIVIL CASE

(Filed May 22, 2006)

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

that summary judgment is entered in favor of Defendant, Huntington Bancshares, Inc., d/b/a The Huntington National Bank, and against Plaintiff, Diane Williams.

Date: May 22, 2006

SHERYL L. LOESCH, CLERK

s:/ **M. Hamner**
M. Hamner, Deputy Clerk

Copies furnished to:

Counsel of Record
Unrepresented Parties

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 07-15254-JJ

DIANE WILLIAMS,

Plaintiff-Appellant,

versus

SUNTRUST BANKS, INC.,
a Georgia Corporation,

Defendant-Appellee.

On Appeal from the United States District Court
for the Middle District of Florida

ON PETITION(S) FOR REHEARING AND
PETITION(S) FOR REHEARING EN BANC

(Filed Jul. 23, 2008)

Before: DUBINA, CARNES and BARKETT, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate

Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ Joel F. Dubina
UNITED STATES
CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 07-15254

DIANE WILLIAMS,

Plaintiff-Appellant,

versus

SUNTRUST BANKS, INC.,
a Georgia Corporation,

Defendant-Appellee.

On Appeal from the United States District Court
for the Middle District of florida

(Filed Aug. 14, 2008)

ORDER:

( ) The motion of Appellant, Diane Williams, for (x) stay of the issuance of the mandate pending petition for writ of certiorari is DENIED.

(X) The motion of Appellant, Diane Williams, for (x) stay of the issuance of the mandate pending petition for writ of certiorari is GRANTED to and including 10/14/08, the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within the period above mentioned there shall be filed with the

Clerk of this Court the certificate of the Clerk of the Supreme Court that the certiorari petition has been filed. The Clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon expiration of the stay granted herein, unless the above mentioned certificate shall be filed with the Clerk of this Court within that time.

/s/ Joel F. Dubina
UNITED STATES
CIRCUIT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 07-15254

DIANE WILLIAMS
Appellant

v.

SUNTRUST BANKS, INC.,
a Georgia Corporation

Appellees

Appeal from a Default Judgment of the
United States District Court
For the Middle District of Tampa

MOTION FOR STAY OF ISSUANCE OF MANDATE PENDING THE FILING AND DEPOSITION OF A PETITION OF A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

Diane Williams
4988 Jersey Avenue
Gulfport, Fl 33707
(727) 321-1953

Date: July 29, 2008

MOTION FOR STAY OF THE ISSUANCE OF THE MANDATE

Appellant Diane Williams received a notice on Saturday, the 26th day of July, 2008 and the notice was dated July 23, 2008 from the Eleventh Circuit Court of Appeals, case number 07-15254-JJ.

Pursuant to the Federal Rules of Appellant Procedure, Williams motions to stay the issuance of the mandate and she intends to file a Writ of Certiorari with the Supreme Court, substantial questions do exist and there is good cause.

Williams Intends to Petition The Supreme Court to address several of the following points;

1. improper failure to sufficiently establish the vital resjudicata elements for which the Defendant bears the burden of proof at trial.

2. Incorrect findings that the defendant (SunTrust) action was interrelated and barred by res judicata at the time of the Huntington prior suit.

3. Incorrect findings that the defendants SunTrust and Huntington cases involved the same cause of action and both cases were transactionally related.

4. Incorrect findings that SunTrust case could have been raised in the previous Huntington Bank suit.

5. Incorrect findings that SunTrust suit was properly and legally join with Huntington to validate claim, preclusion.

6. Incorrect findings of the underlying merits of the Plaintiff's Retaliation Discharge Termination by defendant (SunTrust) had occurred in the Huntington's first and separate Federal lawsuit adjudication and Huntington's separate Appeal Court adjudication.

7. Incorrect findings that the District Court established fact that the Huntington had control and was in privy with the defendant SunTrust subsequent claim.

8. Incorrect findings that the District court did not abuse it's discretion in denying the Plaintiff (Williams) motion for Default Final Judgment.

9. Incorrect findings that the Defendant satisfied the burden of resjudicata according to it's independent state law claims and Huntington's separate and independent state law claims pursuant to 28 U.S.C. 1367.

10. Incorrect findings that the defendant complied with the court's order to defend the resjudicata action prior to the Plaintiff entering the Default Final Judgment.

11. Incorrect findings that both cases were joined and involved the same parties or their privies and that the cases reflected a legitimate joinder for the purpose of resjudicata proceedings.

12. Incorrect findings that the district court did not abuse it's discretion by not certifying and docketing a legitimate final judgment on the merits pursuant to

Fed R. Civ P. 36 and prior to the Plaintiff procedural motion for Default Judgment and prior to the Plaintiff's Interlocutory Appeal of Default Judgment against the Defendant to the Eleventh Circuit Court of Appeals.

13. Incorrect findings that the District court did not accept the Plaintiff's Notice of Right to Suit from the Equal Employment Opportunity Commission.

14. Incorrect findings that the District court honored supplemental jurisdiction in both cases as a matter of Law.

15. Incorrect finding that the lower court did not deny the Plaintiff personal jurisdiction.

16. Incorrect findings that the District court did not honor the Plaintiff (Williams) a Trial by Jury pursuant to the Fourteenth Amendment of the United States which includes due process and equal protection under the Law.

Respectfully submitted this 29th day of July, 2008.

Appellant Pro se

/s/ Diane Williams
Diane Williams

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

Office of the Clerk
Sam M. Gibbons United States Courthouse
801 North Florida Avenue
Tampa, Florida 33602-3800
(813) 301-5400
www.flmd.uscourts.gov

Sheryl L. Loesch
Clerk

Alycia Marshall
Court Operations Supervisor
Vickie Downing
Court Services Supervisor

DATE: November 6, 2007

TO: Clerk, U.S. Court of Appeals for the Eleventh Circuit

DIANE WILLIAMS,

Plaintiff,

-vs-

SUNTRUST BANK, INC.,

Defendant. /

Case No. 8:05-cv-2360-T-23TGW

U.S.C.A. Case No.:

Enclosed are documents and information relating to an appeal in the above-referenced action. Please acknowledge receipt on the enclosed copy of this letter.

- Honorable Steven D. Merryday, United States District Judge appealed from.

- Appeal filing fee was paid.
- Certified copy of Notice of Interlocutory Appeal, docket entries, judgment and/or Order appealed from (documents 35, 37 and 39). Opinion was not entered orally.
- There was no hearing from which a transcript could be made.
- Certified Copy of Updated Docket Sheet

SHERYL L. LOESCH, CLERK

/s/ Denise L. Vought

By: D. Vought, Deputy Clerk

Enclosure(s)

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA TAMPA DIVISION

Diane Williams,

Plaintiff

v.

Sun trust Banks, Inc., a Georgia Corporation,

Defendant. /

Case No: 8:05-cv-2360-23SDM

PLAINTIFF'S MOTION FOR DEFAULT FINAL JUDGMENT DEFENDANT HAS FAILED TO DEFEND ITS OWN FUNDAMENTAL ACTIONS AND OBLIGATIONS TO THE COURT PRIOR TO FINAL JUDGMENT BARRING RES JUDICATA DISMISSAL PENDING LITIGATION

Notice is hereby given that Diane Williams, Plaintiff move the court pursuant to the provisions of rule 55A(b)(2) Federal Rules of Civil Procedure which empowers the court to enter a default judgment against the Defendants failure to respond to the Judge Order To Show Cause.

The Defendant (Suntrust) has already failed to unite a defense with the Huntington National Bank and to plead or otherwise defend actions to formulate a meaningful response to **Judge Merryday's Order to Show Cause (doc. 32) as the Plaintiff respectfully has responded (doc. 33).**

Venue is proper and the court has supplemental jurisdiction under 28 U.S.C. 1367 to here state law claims pursuant to Title VII of the Civil Rights Act of 1964 as amended by the Civil Rights Act of 1991, 42 U.S.C. 2000, F.S. Chapter 760.

The plaintiff have alleged and established separate and distinct constitutional actions between the defendants that is not determined by the preclusive effect of The Huntington National Bank Federal Court Judgment Separately Appealed by the Plaintiff according to Florida Court Summary Judgment Standards. **(Suntrust) EEOC/Human Relations Review Board Hearing – Executive Reporting Services/Transcript Report #P018379.** *(Keough v. Wimpy, 585 so. 2d, 302, 303/Florida 2d D.C.A. 1991)*

Williams v. Huntington case #8:04cv2298730JSM
Cause of Action: Race Discrimination
Resulting in Life Insurance & Annuity
Public Policy Protected Conduct
Docket #1
Counts 1-3

Williams v. Suntrust case #8:05-cv-2360-235SDM
Cause of Acton: Continuing violation of Race Discrimination
Retention Liability Life Insurance & Annuity
Protected Activity
Denial of vacation day off
Broken Promise to Promote
Force Transfer attempt among other acts
Wrongful Retaliatory Constructive Discharge in Violation of Public Policy
Docket 1 counts 1-10

Docket 3 counts 1-10
Docket 12, 26, 33, 35.

Title VII and Equal Pay claims are interest in property under section 363(f). When an insolvent employer sells its assets to another corporation that company may be subject to successor liability, EEOC v. MacMillan Bloedel Containers, Inc. 503 F. 2d 1086, 1090-91 (6th Cir.1974).

Request for a determination of Suntrust successor liability should include;

a. Whether the successor company had notice of the charge

b. The ability of the predecessor to provide relief

c. Whether there has been a substantial continuity of business operation.

d. Whether the successor uses the same plant

e. Whether the successor uses the same or substantially the same work force.

f. Whether the successor uses the same or substantially the same supervisory personnel.

g. Whether the successor uses the same machinery, equipment, and methods of production.

h. Whether the successor produce the same product.

Jurisdictional rights are forfeited for Defendant (Suntrust) and res judicata does not apply from The Huntington previous case as stated;

1. Because Defendant (Suntrust) failed to unite a defense with The Huntington and rejected and diverted from the Plaintiff's good faith position that the Defendants shared an Intertwine relationship during the EEOC process even though the charges were substantially different.

2. Because the Defendant (Suntrust) failed to intervene during the administrative process thereby shifting liability and declining Plaintiffs good faith efforts to conciliate. *(EEOC **"Relief"** City of St. Petersburg Intake Application 05-28-02)*

3. Because the Defendant (Suntrust) failed to take action and consolidate the complaints prior to EEOC granting the Plaintiff with **permission and Notices of Suit Rights against both Predeccessor and Successor.**

4. Because Defendant (Suntrust) failed to unite and take action to intervene in the Huntington's court ordered **mediation process.**

5. Because Defendant (Suntrust) failed to unite and take action to intervene in **The Huntington defense prior to the final decision of The Middle District of Florida Court Ruling.**

6. Because Defendant (Suntrust) failed to take action or intervene as a Defendant in the Plaintiff's **Eleventh Circuit Court of Appeals action against her former employer and its predecessor The Huntington National Bank.**

7. Because the same cause of action was not involved in both complaints and the Defendant (Suntrust) continues to affirmatively mislead the

Plaintiff's present pending cause of action as if it was incorporated as a party and already adjudicated with Huntington summary judgment. The Defendant was not a party to HNB by its own choosing.

8. Because The Huntington National Bank and the Plaintiff (Williams) did not share an employee/ employer relationship after its assets were sold and purchase by Suntrust on **February 15, 2002.**

   a. That in **May, 2002** it was **Suntrust that denied the Plaintiffs request for and a vacation day off not Huntington as summarized in Judge Merryday's recent "Order" respectfully in err. (doc. 34 pg. 2).**

9. Because after the asset purchase it was Suntrust not Huntington that **Intentionally and Wrongfully Discharged** the Plaintiff on May 8, 2002.

10. Because the Plaintiff **Constructive Discharge by Suntrust** was in **Retaliation related to its Predeccessor's (HNB) Race Discrimination charge by Diane Williams (black teller) resulting in deprivation of promotional and compensational opportunities favorable to Erica Craig, appointed agent (caucasian teller) and Life Insurance & Annuity Policy Practices of Protected Conduct.**

11. The Termination of Plaintiff by SunTrust caused aggregate injury to the Plaintiff after the Huntington assets were sold because Suntrust failed

to stop the ongoing retaliation and discriminatory conduct.

12. The Plaintiff a **(24 year key employee)** suffered damages as a result of the Discharge by Suntrust.

a. evidence in the records does confirm that the plaintiff/employee shared an employment relationship between the defendants/ Suntrust.

b. the termination of the plaintiff employment was a violation of a substantial public policy by Suntrust.

c. the termination of employment caused injury to the plaintiff by Suntrust.

d. the plaintiff suffered damages as a result of the discharge by Suntrust.

Dismissal of the Defendant (Sun trust) complaint does not adjudicate the merits as stated in violation of section 806 of the Sarbane Oxley Act, The Plaintiff has in an "extraordinary way" been prevented from asserting her rights.

Plaintiff in good faith has provided sufficient facts and evidence to establish discrimination and retaliatory discharge in this present case and that the intolerable conditions created by the totality of the defendants actions caused the Plaintiff's Intentional Discharge action. *Barlow v. Hester Industries, 198 W.Va. 1187, 479 s.e. 2d 628 (1996. Tudor v. Charleston*

Area Medical Center 203 W.Va. 111, 506 S.E. 2d 554 (1997)

There are disputed factual issues for a jury to resolve and the plaintiff's own evidence was sufficient to support an inference. Dismissal with prejudice does not meet the criteria for a defendant in default as follows;

1. The United States Middle District of Florida does not have jurisdiction of the subject matter.
2. Venue lies properly with this court
3. Plaintiff has stated a claim upon which relief can be granted
4. Plaintiff has stated a Cause of Action against the Defendant to Judge Merryday.
5. Defendant has failed to answer timely by responding to the courts cause of action.
6. Plaintiff opposes the Defendants dismissal
7. The Plaintiff is entitled to have the court decide the merits of the dispute or of it's particular issues.

To avoid **manifest racial injustice**, Plaintiff respectfully request that the Court enter a final judgment by default against the intent of the Defendant for its damages as the circumstance and Law require.

Entered in this action on the 31st day of August, 2007.

/s/ Diane Williams

Diane Williams
4988 Jersey Avenue
Gulfport, Fl 33707

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

DIANE WILLIAMS,

Plaintiff-Appellant

v.

Case No:
8:05-CV-2360-23SDM

SUNTRUST BANK, INC.

Defendant-Appellee /

NOTICE OF APPEAL OF NON-FINAL ORDER

(Filed Nov. 2, 2007)

NOTICE IS GIVEN that Diane Williams, Appellant, appeals to the U.S. Court of Appeals Eleventh Circuit the "Order" (doc.37) rendered October 3, 2007. The Plaintiff received written notice of entry of this Order on October 8, 2007 and seek review on whether *Williams v. Huntington* was a final judgment on the merits and whether *Williams v. Suntrust* was determined on the validity of the merits in this "Order" followed by entry of Final Judgment (doc. 35) rendered August 31, 2007.

November 2, 2007

/s/ Diane Williams

Diane Williams,
Pro se
4988 Jersey Avenue
Gulfport, Fl 33707
Ph: 727-321-1953

113

No. 08-504

Supreme Court, U.S.
FILED
NOV 25 2008
OFFICE OF THE CLERK

In The

Supreme Court of the United States

DIANE WILLIAMS,

Petitioner,

v.

SUNTRUST BANKS, INC.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

The Petitioner's description of the "Questions Presented" is a litany of fact-specific questions that have little or no connection to the opinion of the Eleventh Circuit Court of Appeal, from which the Petitioner seeks review. Focusing on the opinion below, a more accurate statement of the question presented is as follows:

Whether the Eleventh Circuit Court of Appeal's opinion, which affirmed the district court's dismissal of the Petitioner's lawsuit based on the doctrine of *res judicata* and the particular facts of this case, raises any legal issue or dispute that merits this Court's attention.

PARTIES

The petitioner in this matter is Diane Williams ("Ms. Williams" or "Petitioner"). The respondent is SunTrust Banks, Inc. ("SunTrust").

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Appellee states that SunTrust Banks, Inc. is headquartered in Atlanta, Georgia, and is publicly traded on the New York Stock Exchange under the symbol STI. SunTrust Banks, Inc. has no parent company, subsidiaries (including wholly owned subsidiaries), or affiliates that have issued shares to the public.

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CASES

Williams v. Huntington Bancshares, Inc., 8:04-cv-T-30JSM (M.D. Fla. 2004) 1

Williams v. SunTrust Banks, Inc., Case No. 07-15254 (11th Cir. June 4, 2008) 1

OTHER AUTHORITY

U.S. S. Ct. Rule 10 ..... 2, 3

STATEMENT OF THE CASE

On August 17, 2007, the district court entered an order determining that the lawsuit filed by Diane Williams ("Ms. Williams") against SunTrust Banks, Inc. ("SunTrust"), was barred by the doctrine of *res judicata* and specifically by an adverse adjudication in *Williams v. Huntington Bancshares, Inc.*, 8:04-cv-T-30JSM (M.D. Fla. 2004). (App. 6, 8).[1] Ms. Williams then filed a Motion For Default Final Judgment (App. 20-27), which the district court denied on October 3, 2007 (App. 6-7).

Ms. Williams appealed to the Eleventh Circuit Court of Appeals, which rendered an order affirming the district court's order by an opinion rendered on June 4, 2008. (App. 1-5). *Williams v. SunTrust Banks, Inc.*, Case No. 07-15254 (11th Cir. June 4, 2008). Specifically, the Eleventh Circuit held:

> We conclude from the record that the district court did not err in finding that this action was barred by *res judicata*, because (1) the prior suit was a final judgment on the merits, issued by a court of competent jurisdiction; (2) the underlying facts forming the basis of this action occurred prior to Williams's prior action; and (3) it has not been established that SunTrust was not in privity with Huntington.

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[1] The Appendix attached to the Petition For Writ Of Certiorari shall be referenced herein as "App. ___."

(App. 3-4). Subsequently, on June 23, 2008, the Eleventh Circuit denied Ms. Williams' Motion For Rehearing And For Rehearing En Banc. (App. 10-11). Ms. Williams then filed the instant Petition For Writ Of Certiorari seeking this Court's review.

REASONS FOR DENYING THE PETITION

The Court should deny the Petition because the Eleventh Circuit's opinion, and that of the district court, applies the well-settled law of *res judicata* to the particular facts of this case. Ms. Williams did, indeed, file successive lawsuits – first against Huntington Bank and then against its successor SunTrust. As the Eleventh Circuit indicates, the lawsuits were based upon the same factual predicate and/or arose from the same nucleus of fact.

Ms. Williams' Petition does not identify any legal issue or dispute that merits this Court's attention. The Petition identifies neither a conflict of law nor an important question of federal law that "should be settled by this Court . . . " S. Ct. R. 10 (describing considerations used to determine whether a Petition has established "compelling reasons" for certiorari review). Although the basis for the Petition is elusive, at no point does Ms. Williams contend that the Eleventh Circuit's opinion, or the legal citations on which it is based, depart from the well-established law of *res judicata*.

Instead, the Petition contends, in a conclusory manner, that the two cases "were not the same nor was the claim transaction related." (Petition at 10). No facts are presented to support this contention. Even if contrary facts had been identified, such fact-specific disputes do not provide a compelling basis for seeking this Court's review. S. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings . . . "). The greater part of the Petition is spent invoking "moral obligations," "public policy," and "due process" considerations that are never adequately defined and which have no apparent connection to the Eleventh Circuit's opinion.

The bottom-line is this: Ms. Williams had her day in court and she has sought, through these proceedings, to pursue the same claims that she previously lost on the merits. This is not permissible. And with due respect, the equities in this matter are entirely with SunTrust, which has been forced to engage in these protracted legal proceedings despite the prior adjudication on the merits.

CONCLUSION

For the foregoing reasons, this Court should deny Ms. Williams' Petition For Writ Of Certiorari.

Respectfully submitted,

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